

House Bill 246

By: Representatives Willard of the 49th and Oliver of the 83rd

A BILL TO BE ENTITLED
AN ACT

To amend Part 5 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to arrest and detention in juvenile proceedings, so as to change provisions relating to when interim control or detention of accused children is permitted; to provide for legislative findings; to provide for use of a risk assessment instrument for purposes of determining secure detention; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 5 of Article 1 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to arrest and detention in juvenile proceedings, is amended by revising Code Section 15-11-46.1, relating to when interim control or detention of accused children is permitted, as follows:

"15-11-46.1.

(a) As a matter of public policy, restraints on the freedom of accused children prior to adjudication shall be imposed only when there is probable cause to believe that the accused child did the act of which he or she is accused and there is clear and convincing evidence that the child's freedom should be restrained.

~~(b) The imposition of interim control or detention on an accused child may be considered for the purposes of:~~

~~(1) Protecting the jurisdiction and process of the court;~~

~~(2) Reducing the likelihood that the child may inflict serious bodily harm on others during the interim period; or~~

~~(3) Protecting the accused child from imminent bodily harm upon his or her request.~~

(b) A validated, objective, written risk assessment instrument promulgated by the Governor's Office for Children and Families pursuant to terms and conditions set forth in subsection (c) of this Code section shall be used to determine when to impose interim

control or detention and shall be used by the court to meet the purposes provided for in this Code section. The written risk assessment instrument shall be required during the intake process for children being considered for detention at a regional youth detention center or alternative to detention provided by the department. The court may consider any aggravating or mitigating circumstances that warrant rejecting the written risk assessment; provided, however, that if the court rejects such assessment, the court shall set forth in writing the reasons for such a rejection.

(c) The written risk assessment instrument shall be used by the court to determine whether secure detention is necessary. The factors the court may consider include, but shall not be limited to, the following:

(1) The nature and seriousness of the allegations against the child;

(2) The child's present situation;

(3) The age of the child;

(4) The child's prior juvenile court history, including the child's history of appearing for scheduled court hearings;

(5) Any offenses committed by the child pending adjudication; and

(6) The child's prior probationary history and current status.

(d) The imposition of interim control or detention on a child may be considered for the purposes of:

(1) Ensuring the child appears at subsequent court hearings;

(2) Reducing the likelihood that the child may inflict bodily harm on others during the interim period; or

(3) Protecting the accused child from imminent bodily harm upon his or her request.

~~(c)~~(e) Interim control or detention shall not be imposed on an accused child:

(1) To punish, treat, or rehabilitate the child;

(2) To allow parents to avoid their legal responsibilities;

(3) To satisfy demands by a victim, the police, or the community;

(4) To permit more convenient administrative access to the child; or

(5) To facilitate further interrogation or investigation.

~~(d) Whenever an accused child cannot be unconditionally released, conditional or supervised release that results in the least necessary interference with the liberty of the child shall be favored over more intrusive alternatives.~~

~~(e)~~(f) Whenever the interim curtailment of an accused child's freedom is permitted under this Code section, the exercise of authority shall reflect the following values:

(1) Respect for the privacy, dignity, and individuality of the accused child and his or her family;

(2) Protection of the psychological and physical health of the child;

(3) Tolerance of the diverse values and preferences among different groups and individuals;

(4) Assurance of equality of treatment by race, class, ethnicity, and sex;

(5) Avoidance of regimentation and depersonalization of the child;

(6) Avoidance of stigmatization of the child; and

(7) Assurance that the child has been informed of his or her right to consult with an attorney and that if the child cannot afford an attorney, one will be provided.

(g) Secure detention shall only be used when the court determines that less restrictive interim placement alternatives prior to adjudication and disposition are not appropriate.

It is the intent of the General Assembly that the decision to detain a child shall be based upon a prudent assessment of risk and that secure detention should be limited to situations where there is clear and convincing evidence that, prior to adjudication or disposition, a child presents:

(1) A substantial risk of failing to appear;

(2) A danger to himself or herself; or

(3) A substantial risk of committing a subsequent offense or inflicting bodily harm on others as evidenced by recent behavior during the interim period."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.